

## **INITIAL STATEMENT OF REASONS**

### **Section 1859.171. Use of Facility.**

#### **Specific Purpose of the Regulation**

To provide guidance to school districts and Charter Schools regarding the selection of a successor Charter School in the event a Charter School Facilities Program (CSFP) funded Charter School is no longer occupying its facility.

#### **Need for the Regulation**

Education Code Section 17078.62 and School Facility Program (SFP) Regulation Section 1859.171 provide for a successor Charter School to occupy a vacant CSFP funded facility. However, neither provided specificity on the process by which charter schools would be notified or selected and did not clearly state which entity would be responsible for the process. Additionally, the Office of Public School Construction (OPSC) had been notified of two scenarios requiring a successor charter school, which illustrated the need for regulatory amendments. The process for notifying and selecting the successor Charter School for these impacted schools served as a reference point for adding several of the proposed requirements. These amendments to the current regulation provide this information in the form of transparency and consistency in the process of selecting a successor Charter School.

Subsection (a): It was necessary to amend this subsection to introduce the process of selecting a successor Charter School.

Subsection (a)(1): It was necessary to identify the school district where the CSFP funded facility is physically located and that serves the same grade level that was housed in the facility as the entity responsible for notifying charter schools of an available CSFP funded facility. It was also necessary to indicate that Charter Schools authorized to operate within the responsible school district should be notified. Minimum State requirements for a Charter School to be considered a successor Charter School are provided. These align with SFP requirements (provide classroom-based instruction) and Education Code Section 17078.53 (approved petition) and Education Code Section 17078.62 (occupy facility on equal terms as prior charter occupant). Examples of possible school district requirements that OPSC would accept for the process of selecting a successor Charter School are also provided.

Subsection (a)(2): It was necessary to provide direction if more than one interested Charter School meets the minimum requirements in subsection (a)(1). This subsection requires the school district(s) to use a preference points system and provide State required preference points and examples of possible school district preference points. It also requires that equal weight be given to State and school district points.

Subsection (a)(3): It was necessary to provide clarification on how to select the successor Charter School after preference points are awarded and requires that this step be completed with approval from the State.

Subsection (a)(4): It was necessary to provide direction on how to provide preference points and rank joint Charter School applications to ensure that two charter schools applying jointly does not create an unfair advantage.

Subsection (b): Introductory language was added to ensure clarity. This change did not amend the process previously outlined in this subsection.

## **Anticipated Benefits and Economic Impact of the Proposed Regulations**

The proposed amendments promote transparency and consistency because the process will be clarified in regulation. This will benefit school districts and charter schools by ensuring equitability to all parties involved. The State of California will benefit because the State's investment will be maintained; meaning that a CSFP funded facility will continue to operate once a successor Charter School has been selected. The proposed amendments do not have a direct impact on the State's economy or job creation because the successor Charter School will take over the facility on equal terms as the original occupant.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed amendments align with statute and carries out the will of the voters.

## **Technical Documents Relied Upon**

OPSC Stakeholder Meetings/Items, dated February 25 and May 26, 2021, entitled "Identifying a Successor Charter School for the Charter School Facilities Program" (both stakeholder items had the same title).

The State Allocation Board's Action item, dated June 23, 2021, entitled "Proposed Amendments to the Charter School Facilities Program."

## **Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons**

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternative to these proposed amendments would be to take no action and not provide the guidance and clarity that is needed for the process. This would lead to different processes being followed and longer periods of time for a CSFP funded facility to remain empty and unoccupied.

## **Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business**

The SAB has determined that the proposed regulatory amendments will not have a negative impact on small businesses.

## **Finding of Significant Adverse Economic Impact on Businesses**

The SAB has determined that the adoption of the proposed regulatory amendments will not have a negative economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulations, nor will they be disadvantaged by the regulations. Proceeding with the implementation of the proposed regulatory amendments aligns with the statute and carries out the will of the voters. Although the proposed amendments do not have a direct impact on the State's economy, creation of jobs, creation of new businesses, or expansion of businesses it will not eliminate jobs or eliminate existing businesses within California.

**Impact on Local Agencies or School Districts**

The SAB has determined that the proposed regulatory amendments do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies, school districts or Charter Schools to incur additional costs in order to comply with the proposed regulatory amendments.

## **ECONOMIC IMPACT ASSESSMENT OF REGULATIONS**

*“Proposed Amendments to the Charter School Facilities Program”*

### **Proposed State Allocation Board Regulations**

At its June 23, 2021 meeting, the State Allocation Board adopted proposed regulatory amendments that would provide additional clarity on how to proceed with the selection of a successor Charter School under the Charter School Facilities Program (CSFP). This would include notification of interested applicants and selecting a successor Charter School, while ensuring statutory intent for providing CSFP facilities is met.

### **Background and Problem Being Resolved**

SFP Regulation Section 1859.171 already allows for a successor Charter School in the event a CSFP funded Charter School no longer occupies the facility. The authority for this is Education Code Section 17078.62. However, neither the current regulation section or the Education Code section provided specificity on the process by which charter schools would be notified or selected and did not clearly state which entity would be responsible for the process. Additionally, OPSC had been notified of two scenarios requiring a successor charter school, which illustrated the need for regulatory amendments. The process for notifying and selecting the successor Charter School for these impacted schools served as a reference point for adding several of the proposed requirements. These amendments to the current regulation section provide this information in the form of transparency and consistency in the process of selecting a successor Charter School.

OPSC and the California School Finance Authority held two virtual joint public stakeholder meetings; one on February 25, 2021 and one on May 26, 2021 to discuss the proposed amendments. Stakeholders provided feedback regarding the proposed amendments at the February meeting. The comments were discussed at the May meeting; no additional comments were received after the May meeting.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that the proposed regulatory amendments are consistent and compatible with existing State laws and regulations. Proceeding with the proposed regulatory amendments aligns with the statute and carries out the will of the voters.

### **Description of Regulations to Implement Law**

The following State school bonds were authorized by the Legislature and approved by the State’s electorate for purposes of school facility construction for the School Facility Program:

- Kindergarten-University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the SFP. The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998,

which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its June 23, 2021 meeting, the State Allocation Board adopted proposed regulatory amendments that would provide additional clarity on how to proceed with the selection of a successor Charter School under the CSFP. This would include notification of interested applicants and selecting a successor Charter School, while ensuring statutory intent for providing CSFP facilities is met.

#### *Anticipated Benefits of the Proposed Regulations*

The proposed amendments promote transparency and consistency because the process will be clarified in regulation. This will benefit school districts and charter schools by ensuring equitability to all parties involved. The State of California will benefit because the State's investment will be maintained; meaning that a CSFP funded facility will continue to operate once a successor Charter School has been selected. The proposed amendments do not have a direct impact on the State's economy or job creation because the successor Charter School will take over the facility on equal terms as the original occupant.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed amendments align with statute and carries out the will of the voters.

#### *Summary of the Proposed Regulatory Amendment*

Existing Regulation Section 1859.171 provides provisions for the use of or disposal of a charter school facility once a facility is no longer occupied by the original applicant or in cases where an applicant has received advance site acquisition funding but has not met the specified time limits in regulation. The proposed regulatory amendments provide specific guidance and additional clarity that promotes transparency and consistency necessary for the process of selecting a successor Charter School.

#### *Statutory Authority and Implementation*

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

#### *Determination of Inconsistency or Incompatibility with Existing State Regulations*

SFP Regulation Section 1859.171 already allows for a successor Charter School in the event a CSFP funded Charter School no longer occupies the facility. The authority for this is Education Code Section 17078.62. However, neither the current regulation section or the Education Code

section provided specificity on the process by which charter schools would be notified or selected and did not clearly state which entity would be responsible for the process. OPSC was notified of two scenarios requiring a successor charter school, which illustrated the need for regulatory amendments. The process for notifying and selecting the successor Charter School for these impacted schools served as a reference point for adding several of the proposed requirements. These amendments to the current regulation section provide this information in the form of transparency and consistency in the process of selecting a successor Charter School.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed amendments are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendments are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

### **Impact to California Businesses and Jobs**

The proposed amendments promote transparency and consistency because the process will be clarified in regulation. This will benefit school districts and charter schools by ensuring equitability to all parties involved. The State of California will benefit because the State's investment will be maintained; meaning that a CSFP funded facility will continue to operate once a successor Charter School has been selected. The proposed amendments do not have a direct impact on the State's economy or job creation because the successor Charter School will take over the facility on equal terms as the original occupant.

Proceeding with the implementation of the proposed amendments align with statute and carries out the will of the voters. Although the proposed amendments do not have a direct impact on the State's economy, creation of jobs, creation of new businesses, or expansion of businesses, it will not eliminate jobs or eliminate existing businesses within California.

### **Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment**

- The proposed amendments promote transparency and consistency because the process will be clarified in regulation. This will benefit school districts and charter schools by ensuring equitability to all parties involved. The State of California will benefit because the State's investment will be maintained; meaning that a CSFP funded facility will continue to operate once a successor Charter School has been selected. The proposed amendments do not have a direct impact on the State's economy or job creation because the successor Charter School will take over the facility on equal terms as the original occupant.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts, charter schools, and local educational agencies utilize construction and trades employees to work on school construction projects and although this proposed regulation does not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.
- There is no impact to the State's environment from the proposed regulatory amendments.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.